

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BERNARD HAMILTON,

No. C 06-6268 CW (PR)

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

v.

OFFICER ADAMIK, et al.,

(Docket no. 211)

Defendants.

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BERNARD HAMILTON,

No. C 09-0648

Plaintiff,

ORDER GRANTING MOTION TO
REOPEN, DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT,
GRANTING PLAINTIFF LEAVE TO
FILE AMENDED COMPLAINT AND
SETTING BRIEFING SCHEDULE
FOR DISPOSITIVE MOTIONS

v.

G. THOMPSON, et al.,

Defendants.

_____ /

(Docket no. 101)

BACKGROUND

The cases discussed in this Order have a lengthy procedural history, which the Court sets forth below.

In 2006, Plaintiff, a state prisoner incarcerated at (SQSP), filed Hamilton v. Adamik, et al., C 06-06268 CW (PR) (Adamik), alleging prison officials at SQSP had acted with deliberate indifference to his serious medical needs and retaliated against him because of his attempts to obtain medical care.

On June 11, 2008, after meeting with Magistrate Judge Nandor Vadas, the parties entered into a settlement agreement comprised of the following terms: "(1) Plaintiff shall be provided a medical chrono allowing him an extra pillow; (2) Plaintiff shall be

1 allowed to possess and use his pulse oximeter as long as it is
2 medically necessary; (3) Plaintiff shall be examined by SQSP
3 doctors for determination on the appropriate treatment of
4 Plaintiff's current medical condition; (4) in exchange
5 for the foregoing, Plaintiff shall dismiss the Complaint with
6 prejudice; (5) Judge Vadas shall retain jurisdiction to monitor
7 this case until the dismissal is filed." Adamik, Docket no. 65 at
8 1-2. On July 7, 2008, the Court approved the settlement agreement
9 and dismissed the case with prejudice. Id., Docket 66.

10 Subsequently, Plaintiff moved for reconsideration of the order of
11 dismissal based on Defendants' alleged failure to comply with the
12 terms of the settlement agreement. Id., Docket nos. 69-72.

13 While the motion for reconsideration was pending, Plaintiff
14 filed Hamilton v. Thomson, et al., C 09-00648 CW (PR) (Thomson),
15 raising claims of deliberate indifference to his serious medical
16 needs, violations of the Americans with Disabilities Act, breach
17 of contract and retaliation. The parties filed cross-motions for
18 summary judgment and various other motions. Plaintiff voluntarily
19 withdrew all claims other than the breach of contract and
20 retaliation claims. Thomson, Docket no. 99.

21 On March 26, 2012, the Court granted Plaintiff's motion for
22 reconsideration in the Adamik case. The Clerk was directed to
23 reopen the case; it was referred to Magistrate Judge Vadas for
24 further proceedings to determine whether the settlement agreement
25 had been breached and/or whether further Court action was required
26 to ensure compliance with the terms of the settlement agreement.
27 Adamik, Docket no. 73.

28 On June 27, 2012, Defendants in Adamik filed their motion to

1 enforce the settlement and to dismiss the case. Adamik, Docket
2 no. 182. On November 6, 2012, the Court issued its Order Adopting
3 Magistrate Judge's Report and Recommendation Re: Motion to Enforce
4 Settlement and Motion to Dismiss Litigation. Adamik, Docket no.
5 210. In particular, the Court concurred with Magistrate Judge
6 Vadas's assessment that "although there is no doubt that Plaintiff
7 entered into the 2008 settlement to end the ice dispute and obtain
8 a laptop computer, the settlement agreement does not include the
9 provision of these items as terms of the settlement." Id. at
10 1:18-21. The Court adopted the Report and Recommendation in full,
11 including Magistrate Judge Vadas's "regretful[]" conclusion that
12 the Court lacks the power to order Defendants to provide a laptop
13 and ice to Plaintiff under the terms of the Notice of Settlement.
14 Id. at 1:24-26. In that same order, Plaintiff was advised by the
15 Court that if he is of the belief that he has a serious medical
16 need that requires he be provided with a laptop and ice, he is not
17 precluded from filing a new and separate lawsuit raising such
18 claims. Id. at 2:2-5.

19 Plaintiff now moves for reconsideration of the Court's order
20 dismissing the Adamik case, and to reopen and be granted summary
21 judgment in the Thomson case. Defendants have opposed Plaintiff's
22 motions and Plaintiff has filed replies.

23 For the reasons discussed below, the motion for
24 reconsideration of the order of dismissal in Adamik is DENIED, the
25 motion to reopen Thomson is GRANTED, the motion for summary
26 judgment in that case is DENIED as premature and Plaintiff is
27 GRANTED leave to file an amended complaint.

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I. Motion for Reconsideration in Adamik

A motion which challenges the Court's final judgment may be brought under either Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. See Fuller v. M.G. Jewelry, 950 F.2d 1437, 1441-42 (9th Cir. 1991). Plaintiff's motion, which was filed within ten days of entry of judgment, will be treated as a motion to alter or amend judgment under Rule 59(e). See United States v. Nutri-Cology, Inc., 982 F.2d 394, 396-97 (9th Cir. 1992). "A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." McDowell v. Calderon, 197 F.3d 1253, 1254 (9th Cir. 1999) (quotation and citation omitted).

The Court has reviewed Plaintiff's motion and his declaration and other evidence in support thereof. Plaintiff has not presented the Court with newly discovered evidence, shown that the Court committed clear error, or shown that there has been an intervening change in the controlling law that would change the Court's ruling. Accordingly, the motion for reconsideration under Rule 59(e) is DENIED.

II. Motion to Reopen and for Summary Judgment in Thomson

Following entry of the order of dismissal in Adamik, Plaintiff moved for summary judgment in Thomson on his breach of contract and retaliation claims. Defendants object to the motion on the ground that the case is closed and the issues raised therein already have been adjudicated. Plaintiff has responded by moving to reopen the case, arguing that his breach of contract and

1 retaliation claims are different than the claims addressed in
2 Adamik. Specifically, Plaintiff maintains that Adamik addressed
3 solely the terms of the settlement agreement and resulted in a
4 finding that the settlement agreement did not encompass
5 Plaintiff's demands for ice and a laptop. By contrast, Plaintiff
6 argues, his claims in Thomson concern Dr. E. Tootell's alleged
7 unwarranted revocation of the medical chrono she previously
8 authorized ordering that he receive ice and a laptop, and the
9 alleged retaliatory denial of his medical grievance concerning
10 that matter by N. Grannis at the Director's level of review.

11 The Court finds Plaintiff's argument sufficiently persuasive
12 to warrant reopening the Thomson case to allow him to reassert his
13 claims against Dr. Tootell and N. Grannis. Plaintiff, however,
14 must file and serve on Defendants' counsel an amended complaint
15 that sets forth only the claims against Defendants Tootell and
16 Grannis.

17 Based on the above, the Court rules as follows: Plaintiff's
18 motion to reopen the Thomson case is GRANTED, his motion for
19 summary judgment is DENIED as premature and he is GRANTED leave to
20 file an amended complaint that sets forth the claims he seeks to
21 pursue against Dr. Tootell and N. Grannis in this case. Any
22 medical care claims that Plaintiff might seek to pursue concerning
23 events that occurred after the date the Thomson case was filed
24 must be brought in a new and separate action.

25 CONCLUSION

26 For the foregoing reasons, the Court orders as follows:

27 1. Plaintiff's motion for reconsideration in Hamilton v.
28 Adamik, et al., C 06-6268 CW (PR) is DENIED. Docket no. 211.

1 2. Plaintiff's motion to reopen Hamilton v. Thomson, et
2 al., C 09-0648 CW (PR) is GRANTED. The Clerk of the Court is
3 directed to REOPEN this case.

4 3. Plaintiff's motion for summary judgment in C 09-0648 is
5 DENIED as premature. Docket no. 101.

6 4. Plaintiff is GRANTED leave to file an amended complaint
7 in C 09-0648. Plaintiff shall file the amended complaint and
8 serve a copy thereof on counsel for Defendants in that case no
9 later than thirty days from the date of this Order. His failure
10 to do so will result in the dismissal of the action without
11 prejudice.

12 5. Defendants shall answer the complaint in accordance with
13 the Federal Rules of Civil Procedure. The following briefing
14 schedule shall govern dispositive motions in this action:

15 a. No later than thirty days from the date their
16 answer is due, Defendants shall file a motion for summary judgment
17 or other dispositive motion. If Defendants file a motion for
18 summary judgment, it shall be supported by adequate factual
19 documentation and shall conform in all respects to Federal Rule of
20 Civil Procedure 56. If Defendants are of the opinion that this
21 case cannot be resolved by summary judgment, they shall so inform
22 the Court prior to the date the summary judgment motion is due.
23 All papers filed with the Court shall be promptly served on
24 Plaintiff.

25 At the time of filing the motion for summary judgment or
26 other dispositive motion, Defendants shall comply with the Ninth
27 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.
28 2012), and Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012), and

1 provide Plaintiff with notice of what is required of him to oppose
2 a summary judgment motion or a motion to dismiss for failure to
3 exhaust administrative remedies.

4 b. Plaintiff's opposition to the motion for summary
5 judgment or other dispositive motion shall be filed with the Court
6 and served on Defendants no later than twenty-eight days after the
7 date on which Defendants' motion is filed.

8 Before filing his opposition, Plaintiff is advised to read
9 the notice that will be provided to him by Defendants when the
10 motion is filed, and Rule 56 of the Federal Rules of Civil
11 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party
12 opposing summary judgment must come forward with evidence showing
13 triable issues of material fact on every essential element of his
14 claim). Plaintiff is cautioned that because he bears the burden
15 of proving his allegations in this case, he must be prepared to
16 produce evidence in support of those allegations when he files his
17 opposition to Defendants' summary judgment motion. Such evidence
18 may include sworn declarations from himself and other witnesses to
19 the incident, and copies of documents authenticated by sworn
20 declaration. Plaintiff will not be able to avoid summary judgment
21 simply by repeating the allegations of his complaint.

22 c. Defendants shall file a reply brief no later than
23 fourteen days after the date Plaintiff's opposition is filed.

24 d. The motion shall be deemed submitted as of the date
25 the reply brief is due. No hearing will be held on the motion
26 unless the Court so orders at a later date.

27 6. Discovery may be taken in this action in accordance with
28 the Federal Rules of Civil Procedure. Leave of the Court pursuant
to Rule 30(a)(2) is hereby granted to Defendants to depose

1 Plaintiff and any other necessary witnesses confined in prison.

2 7. All communications by Plaintiff with the Court must be
3 served on Defendants' counsel, by mailing a true copy of the
4 document to Defendants' counsel.

5 8. It is Plaintiff's responsibility to prosecute this case.
6 He must keep the Court informed of any change of address and must
7 comply with the Court's orders in a timely fashion.

8 9. Extensions of time are not favored, though reasonable
9 extensions will be granted. Any motion for an extension of time
10 must be filed no later than fourteen days prior to the deadline
11 sought to be extended.

12 This Order terminates Docket no. 211 in C 06-6268 and Docket
13 no. 101 in C 09-0648

14 IT IS SO ORDERED.

15 Dated: 6/4/2013


CLAUDIA WILKEN
United States District Judge

United States District Court
For the Northern District of California